

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CRESTVIEW CAPITAL MASTER, LLP,  
MIDSUMMER INVESTMENT, LTD.,  
KAUAI PARTNERS, L.P., on behalf of  
Themselves and all others similarly  
situated,

Plaintiffs,

v.

DUANE MARTIN, an individual; MARC  
FRY, an individual; JOHN LEVY, an  
individual, and UNIVERSAL FOOD &  
BEVERAGE COMPANY, INC., a Nevada  
corporation,

Defendants.

Case No.: 08-CV-03263  
Honorable Charles C. Kocoras

PLAINTIFFS' MOTION FOR LEAVE TO TAKE DISCOVERY

Plaintiffs, by their attorneys, move this Court, pursuant to Rules 4 and 26(d) of the Federal Rules of Civil Procedure, for an order granting them leave to serve a subpoena on the law firm of Vedder Price Kaufman & Kammholz PC and Randall M. Lending, a shareholder of that firm, for the sole purpose of obtaining information leading to the discovery of a current address for Defendant Duane Martin.

In support of their motion, Plaintiffs state as follows:

1. On June 5, 2008, the Complaint in this case was filed. On August 14, 2008, counsel for Plaintiffs appeared at the initial status conference in this action and informed this Court that counsel had learned on August 12 that service of summons on Duane Martin was made at the home of his ex-wife and that counsel was attempting to locate a current address for Mr. Martin. An investigator is currently trying to locate Mr. Martin.

2. In late July, counsel for Duane Martin filed a motion in the bankruptcy proceeding of Defendant Universal Food & Beverage Company, Inc. seeking fees in connection with this case, in connection with an investigation being conducted by the Securities and Exchange Commission, and in connection with an adversary proceeding filed against him by Universal's Unsecured Creditors' Committee. A copy of this motion is attached hereto as Exhibit A.

3. After learning that Plaintiffs had not obtained good service on Mr. Martin in this case, counsel for Plaintiffs asked Mr. Lending of Vedder Price whether he was authorized to accept service on behalf of Mr. Martin. Mr. Lending then contacted Mr. Martin and reported that Mr. Martin would not authorize him to accept service. When asked for his address, Mr. Lending would not or could not provide that information.

4. Plaintiffs ask this Court for an order allowing service of a subpoena to obtain this information and to compel a response to that subpoena within five days.

WHEREFORE, Plaintiffs move this Court for an order granting them leave to serve a subpoena duces tecum on the Randall M. Lending and the firm of Vedder Price Kaufman & Kammholz PC, returnable within five days,

s/ Robert E. Williams  
One of Plaintiffs' Attorneys

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**CERTIFICATE OF SERVICE**

Robert E. Williams, one of the attorneys for Plaintiffs, certifies that he caused a true and correct copy of the foregoing MOTION FOR LEAVE TO TAKE DISCOVERY to be served on counsel for Defendant Fry by electronic filing and to be served on counsel for Defendant Martin (who has not appeared) by email this 29th day of August, 2008.

s/ Robert E. Williams

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:

UNIVERSAL FOOD & BEVERAGE  
COMPANY, INC., ET AL.,

Debtor.

Chapter 11

Case No. 07-15955  
(Jointly Administered)

Honorable Jacqueline P. Cox

**NOTICE OF MOTION**

To: See Attached Service List

**PLEASE TAKE NOTICE** that on July 23, 2008 at 10:00 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Jacqueline P. Cox or any judge sitting in her stead, in the courtroom usually occupied by her in Courtroom 619 of the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, IL 60604, and then and there present the attached *Duane Martin's Motion for Entry of Order Declaring That Payment of Defense Costs Does Not Violate the Automatic Stay*, a copy of which is attached hereto and hereby served upon you.

DUANE MARTIN

By: s/ Michael Eidelman  
One of His Attorneys

Michael Eidelman  
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Dated: July 18, 2008

**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing ***Duane Martin's Motion for Entry of Order Declaring That Payment of Defense Costs Does Not Violate the Automatic Stay*** were served upon the persons on the attached service list via first class mail, postage pre-paid, by dropping same in the mailbox at 222 N. LaSalle Street, Chicago Illinois, 60601-1003 today, July 18, 2008. Other parties on the attached service list were served today via e-mail.

s/ Michael Eidelman

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:

UNIVERSAL FOOD & BEVERAGE  
COMPANY, INC., ET AL.,

Debtor.

Chapter 11

Case No. 07-15955  
(Jointly Administered)

Honorable Jacqueline Cox

**DUANE MARTIN'S MOTION FOR ENTRY OF ORDER DECLARING THAT  
PAYMENT OF DEFENSE COSTS DOES NOT VIOLATE THE AUTOMATIC STAY**

Duane Martin ("Martin"), by and through his attorneys, Vedder Price, P.C., hereby requests that this Honorable Court enter an Order declaring that the payment of defense costs to Martin from the proceeds of insurance policies covering the Debtor's directors and officers does not constitute a violation of the automatic stay. In support thereof, Martin states as follows:

1. Martin was the former Chief Executive Officer and Chairman of the Board of Universal Food & Beverage Company, Inc., the Debtor in this bankruptcy proceeding.
2. Martin has retained Vedder Price, P.C. to represent him in connection with three pending matters: (1) an investigation conducted by the SEC in connection with a March 12, 2007 Order Directing Private Investigation and Designating Officers to Take Testimony *In the Matter of Universal Food and Beverage Co.*, No. C-07217 and an April 6, 2007 SEC Subpoena directed to Martin, a copy of which is attached as Exhibit A (the "SEC Investigation"); (2) an Adversary Proceeding which Martin received notice of by the Official Committee of Unsecured Creditors of Universal (the "Adversary Proceeding"), a copy of which is attached as Exhibit B; and (3) a securities fraud action styled *Crestview Capital Master, LLP, et al. v. Martin, et al.*, pending in the United States District Court for the Northern District of Illinois, Case No.08 CV 03263 (the "Crestview Action"), a copy of which is attached as Exhibit C.

3. Vedder Price represented and advised Martin in connection with the SEC Investigation which included a review and analysis of numerous documents related to Universal as well as represented Martin during four days of testimony before the SEC. In addition, Vedder Price has reviewed, analyzed and advised Martin relating to the allegations and causes of action contained in the Adversary Proceeding and Crestview Action and has also had numerous conferences with Martin relating to the factual allegations asserted in the Adversary Proceeding and the Crestview Action.

4. Martin submitted these matters for defense and indemnity coverage under directors and officers insurance ("D&O") Policies issued by U.S. Specialty Insurance Company ("US Specialty"), in particular D & O Policy No.: 14-MGU-07-A-14244 (4/07 - 8/08) D& O Policy No.: 14-MGU-06-A12097 (4/06 - 4/07).

5. In particular, Martin has requested that US Specialty pay Martin's Defense Costs in connection with these matters totaling \$75,079.97 incurred through May 30, 2008.

6. Martin respectfully requests that this Court enter an Order declaring that the payment of Defense Costs by US Specialty under the D&O Policies does not constitute a violation of the automatic stay.

7. The law in this Circuit is well-settled. Proceeds of insurance policies providing liability coverage to officers and directors of a debtor-corporation are not property of the bankruptcy estate and, accordingly, any attempt to recover such proceeds is not subject to the automatic stay. *See, e.g., In re Marchfirst, Inc., et al.*, 288 B.R. 526 (N.D. Ill. 2002)(holding that the proceeds of directors' and officers' liability policies that were purchased by the debtor were not protected by the automatic stay).

8. Accordingly, Martin seeks an Order by this Court declaring that the payment of his Defense Costs from the proceeds of the D&O Policies does not constitute a violation of the automatic stay.

WHEREFORE, Martin respectfully requests that this Court enter an Order declaring that the payment of his Defense Costs from the proceeds of the D&O Policies does not constitute a violation of the automatic stay and for further relief as this Court finds just and equitable.

Respectfully submitted,

DUANE M. MARTIN

By: s/ Michael Eidelman  
One of His Attorneys

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